IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

MONDAY, THE NINETEENTH DAY OF FEBRUARY
TWO THOUSAND AND SEVEN

PRESENT
THE HON'BLE SRI JUSTICE BILAL NAZKI
and
THE HON'BLE SRI JUSTICE G.BHAVANI PRASAD

Writ Petition No.7898 of 2006

Between:

Relangi Satyanarayana Babu.

..... PETITIONER

AND

The Commissioner,
Tadepalligudem Municipality,
Tadepalligudem, West Godavari District.

.....RESPONDENTS

The Hon'ble Sri Justice Bilal Nazki
and
The Hon'ble Sri Justice G.Bhavani Prasad

Writ Petition No.7898 of 2006

Order: ***(Per Hon'ble Sri Justice Bilal Nazki)***

The learned Counsel for the respondent is not present and an adjournment is sought on his behalf by Sri N.Aswathnarayana, Advocate.

We have heard the learned Counsel for the petitioner as this case has come up on several occasions earlier.

The petitioner claims benefit under Section 92 of the

A.P.Municipalities Act, 1965, for remission of tax of building on the ground that the cinema theatre, which belongs to him and which is assessed to tax, had been sealed by the sales tax authorities for non-payment of tax.

In the counter-affidavit, the respondent has stated that a mechanism is provided under Section 92 of the Andhra Pradesh Municipalities Act, 1965 (for short 'the Act') for claiming remission of tax, and the petitioner has not made any application as contemplated under Section 92 of the Act. It is further stated that the petitioner was also informed by the impugned order that there was no provision in the Act to exempt a cinema theatre from payment of property tax on the ground that the sales tax authorities had sealed the theatre.

Section 92 of the Act provides for Vacancy Remission in cases mentioned under the Section. Section 92(1) of the Act lays down that when any building or land or any portion of any premises, which has been treated as a separate property, remains vacant for thirty or more consecutive days in the

half-year, the Commissioner shall grant remission to a maximum of one half of the amount paid in respect of the tax for the number of days that such vacancy lasted. This power of Commissioner is further limited by sub-Sections 2, 3 and 4 of Section 92 of the Act. Sub-section 92(4) (a) lays down as under,

> 'No demand for such remission shall be entertained unless the owner of the building, land or premises or his agent has previously thereto delivered notice to the Commissioner.

> (i) that the building, land or premises is vacant and unlet; or
> (ii) that the building, land or premises will be vacant and unlet from a specified date either in the (half-year) in which notice is delivered or in the succeeding (half-year).

Since no such notice was given to the Commissioner, the petitioner cannot not claim any benefit under Section 92 of the Act. A bare perusal of Section 92 of the Act further shows that the question of remand would arise only after payment of the tax and not before payment of the tax.

We have our own doubts whether a building, which is sealed by a statutory authority for non-payment of tax, could be considered a vacant building or not. But, we are not deciding that question in this Writ Petition, because, otherwise also the petitioner is not going to succeed.

It may also be pointed out that when this Writ Petition was entertained by this Court on 20-04-2006, interim stay had been granted subject to payment of 50% of the arrears within four weeks. This amount has also not been deposited so far.

For these reasons, we dismiss the Writ Petition. No costs.

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(***Bilal Nazki, J***)

19th February, 2007

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(***G.Bhavani Prasad, J***)

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